

Jk.

528

M23

Maish  
Present Method  
of  
Electing a President  
Wash., 1879.





Class J K 528

Book M 23





Should the Present Method of Electing a President and Vice-President of the United States be Changed?

---

"Nothing can be imagined more dastardly than the disposition of those men who despair of their country. They make me think I see a graceless son, after supporting a little while the languid head of his sick mother, toss her back upon her bed and say, 'She will die, and why then should I give myself any trouble about her?'"

"Whenever opposition is made to an apparently wise reformat'ion let the people look that corruption be not at the bottom."

---

S P E E C H

OF

HON. LEVI MAISH,  
OF PENNSYLVANIA,

IN THE

HOUSE OF REPRESENTATIVES,

FEBRUARY 14, 1879.

• • •



WASHINGTON.

1879.

Good Friday 1879



SPEECH  
OF  
HON. LEVI MAISH.

---

The House being in Committee of the Whole for debate only—

Mr. MAISH said :

Mr. SPEAKER : As we stood upon the threshold of the second century of our Government's existence we were confronted by a grave danger. We had passed through an election for President attended by unwonted party bitterness and high political excitement, and which left the title to that high office in dispute. All men recognized the fact that the great trial of our country had come, and the question whether free institutions on this continent should survive or perish had been brought to the awful test.

As Webster said upon another occasion :

All Europe was at that moment beholding us, and looking for the issue of the controversy ; those who hated free institutions with malignant hope—those who loved her, with deep anxiety and shivering fear.

The malignant hope of her enemies was not met, and the hearts of her friends were gladdened, for we escaped the peril and our country was saved. It is madness to suppose that we can peaceably pass through another ordeal like it. If in 1880 an election be held under the old system and the same condition of things arise, as they probably will, civil war in my judgment will inevitably follow. The express will of the people cannot again be set aside. If it should appear that one or the other of the contending parties had elected their candidate they will not permit their choice to be defeated by partisan contrivances or fraudulent means.

In the face of these conceded dangers, it was supposed that prompt action would be taken to guard by constitutional means the public safety. We have now nearly reached the period of another election and nothing has been done. From what does this apathy arise ? Are the evils that exist not duly appreciated, or has no satisfactory remedy been proposed ? Let us examine these questions. Amendments to our Constitution have never met with much favor. Innovations upon its provisions have always encountered resistance. When abuses grow up under it which are the fruits of its imperfections, wisdom dictates that an attempt shall be made at least to improve it. It would be madness to pause when the defects of the Constitution invite its own destruction. The great men who framed it well understood that occasions would come for its amendment ; and, in

fact, in a very short time after its adoption it was found necessary to do so. Many of the men who signed that instrument participated in the work of improvement themselves. The method provided for its amendment constitutes a perfect safeguard against hasty and inconsiderate changes or alterations of our organic law. Two-thirds of both Houses, or conventions called upon the applications of two-thirds of the States, are necessary to propose amendments, and the ratification of three-fourths of the Legislatures of the several States are necessary before an amendment can become a part of the Constitution.

Various amendments have, in the history of our Government, been proposed in the forms provided and have been rejected by the Legislatures of the States. Apprehensions, therefore, of this sort, it seems to me, are not well grounded. Blind conservatism is an enemy of progress and is itself a deplorable evil. The provision of the Constitution under which our Chief Executive is elected presents a singular history.

The object which the framers of the Constitution had in view is radically different from the practice that has prevailed under it, and I have no hesitancy in saying that had its practical application been presented to the convention in a formulated proposition, it would not have received the support of the delegates of a single State. We have in this regard altered the Constitution without observing the forms for doing it. The provision of the Constitution prescribing the method for electing the President and Vice-President is found in article 2, section 1, and is as follows :

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress : but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The intention of the framers of the Constitution was to commit the election of these high officers to a body of men distinct from and independent of the voters—or the Legislatures of the States. It had its origin in a distrust of the voters. Its purposes are explained by Alexander Hamilton in the following words. He says : ~

It is equally desirable that the immediate election should be made by men most capable of analyzing the qualities adapted to the station and acting under circumstances favorable to deliberation and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigation.

How different is the theory of this provision of the Constitution from the practice of it. The electors were to cast their votes for the candidates for President and Vice-President without any instruction from the voters who selected them. It was supposed that it would not be safe to intrust the selection of these high officers to the voters. The electors, under the Constitution, were to elect a President without any previous instruction from any quarter. To their judgment, discretion, and intelligence alone was this trust confided. Now, in fact, the electors have become the useless agencies to ratify merely the express will of the voters. So thoroughly fixed and permanent has this custom now become that it would be nothing short of criminal for any elector to disregard the wishes of those who elected him.

In this respect, therefore, it is seen that the purposes of those who framed the Constitution have in the practice of this provision been wholly defeated. For a while some of the States appointed the electors by their Legislatures, in plain violation of the Constitution. This,

however, became so unpopular that it was soon abandoned, and the only State that continued it for any length of time was the State of South Carolina, which appointed its electors in that way up to the commencement of the rebellion. In other States the electors were appointed by congressional districts. This was, in my judgment, the practice that was contemplated by the fathers, and if it had been adhered to many of the evils and abuses that have arisen under this provision of the Constitution would have been avoided.

Ambitious men, stimulated by lust of power, soon discovered the advantage of a general-ticket system, by means of which they could throw the whole weight of the electoral votes of a State upon one side or the other of the scale. The political advantages that this would give to the politicians of a great State are apparent. The States that were disposed to adhere to the true system, namely, the election by congressional districts, were soon compelled to abandon that in self-defense. Thus one evil became the parent of another, and what was a mere fact one day was treated as a precedent the next. We are, therefore, now practicing a method for the election of the highest officers in our form of Government which has very little warrant in the Constitution, were its letter and spirit strictly followed.

Let us take a retrospective view of the elections as they occurred in our history. The original article upon this subject provided that electors should be appointed in such manner as the Legislatures of the respective States may direct; that they should meet in the respective States and vote by ballot for two persons, and the person having a majority of the whole number of the votes cast by the electors should be the President, and the person receiving the next highest number of votes should be the Vice-President. By this mode George Washington was twice elected and John Adams was once elected. Under this original provision occurred the memorable contest between Jefferson and Burr, and a person who had not received a single vote for President, either through the electors or the people, was nearly elected President of the United States.

In consequence of the violence thus attempted to be done to the popular will, the twelfth amendment to the Constitution was proposed and adopted. By it the electors are required to name in their ballots the persons voted for for President and the persons voted for for Vice-President, and to make a distinct list of the persons voted for and the number of votes cast for each, and to transmit the same to the President of the Senate, who, in the presence of the Senate and the House of Representatives, shall "open all the certificates and the votes shall then be counted, and the person having the greatest number of votes for President shall be the President if such number be a majority of the whole number of electors appointed."

This was doubtless an improvement upon the old plan, and I am sure was the means thus far of averting disaster. The prompt action of our statesmen in those days in remedying our Constitution is an example that should be followed now. We have given above substantially the Constitution respecting the election of President and Vice-President as it now stands. Under it frequent difficulties have arisen and intrigues and corruption have been practiced that have brought reproach upon our country. The popular will was on several occasions set at defiance and persons were put in the seat of Washington who could under no circumstances have received the indorsement of the suffrages of the American people, showing that our mode of election is at variance with the spirit of free Government and as I believe subversive of the original intent of the framers of the Constitution.

We give below a table of the elections for President held since the year 1824. Anterior to that time no authentic or reliable popular vote can be obtained. A number of the Legislatures of the States of that time still continued to appoint the electors of the States, and of course in such cases no popular vote was had, whilst in others where the people did participate in the election we have not been able to find any record.

Year.	Candidates.	Political party.	No. of electors.	Total electors.	Popular vote.
1824	Andrew Jackson . . . . .	Democrat . . . . .	99		152, 899
	John Quincy Adams . . . . .	Federalist . . . . .	84	261	105, 321
	William H. Crawford . . . . .	Caucus . . . . .	41		47, 265
	Henry Clay . . . . .	Whig . . . . .	37		47, 087
1828	Andrew Jackson . . . . .	Democrat . . . . .	178	261	650, 025
	John Quincy Adams . . . . .	Federalist . . . . .	83		512, 158
1832	Andrew Jackson . . . . .	Democrat . . . . .	219		687, 502
	Henry Clay . . . . .	National re-publican. . . . .	49	288	550, 189
	William Wirt . . . . .	Anti-Mason . . . . .	7		
	John Floyd . . . . .	Anti-Jackson . . . . .	11		
1836	Martin Van Buren . . . . .	Democrat . . . . .	170		771, 962
	William Henry Harrison . . . . .	Whig . . . . .	73		
	Hugh L. White . . . . .	do . . . . .	26	294	
	Daniel Webster . . . . .	do . . . . .	14		769, 350
	Willie P. Mangum . . . . .	do . . . . .	11		
1840	William H. Harrison . . . . .	do . . . . .	234	294	1, 274, 203
	Martin Van Buren . . . . .	Democrat . . . . .	60		1, 128, 303
	James G. Birney . . . . .	Abolitionist . . . . .			7, 609
1844	James K. Polk . . . . .	Democrat . . . . .	170	275	1, 329, 023
	Henry Clay . . . . .	Whig . . . . .	105		1, 231, 643
	James G. Birney . . . . .	Abolitionist . . . . .			66, 304
1848	Zachary Taylor . . . . .	Whig . . . . .	163	290	1, 362, 242
	Lewis Cass . . . . .	Democrat . . . . .	127		1, 223, 795
	Martin Van Buren . . . . .	Free-soil . . . . .			291, 875
1852	Franklin Pierce . . . . .	Democrat . . . . .	254	296	1, 585, 545
	Winfield Scott . . . . .	Whig . . . . .	42		1, 383, 537
	John P. Hale . . . . .	Free-soil . . . . .			157, 296
1856	James Buchanan . . . . .	Democrat . . . . .	174	296	1, 838, 229
	John C. Frémont . . . . .	Free-soil . . . . .	114		1, 342, 864
	Millard Fillmore . . . . .	Whig . . . . .	8		874, 625
1860	Abrabam Lincoln . . . . .	Republican . . . . .	180		1, 866, 452
	Stephen A. Douglas . . . . .	Democrat . . . . .	12	303	1, 375, 057
	John C. Breckinridge . . . . .	do . . . . .	72		847, 953
	John Bell . . . . .	Whig . . . . .	39		590, 631
1864	Abraham Lincoln . . . . .	Republiecan . . . . .	212	233	2, 223, 035
	George B. McClellan . . . . .	Democrat . . . . .	21		1, 811, 754
1868	Ulysses S. Grant . . . . .	Republican . . . . .	214	317	3, 016, 353
	Horatio Seymour . . . . .	Democrat . . . . .	80		2, 706, 637
1872	Ulysses S. Grant . . . . .	Republican . . . . .	286		3, 597, 070
	Horace Greeley . . . . .	Liberal . . . . .			2, 834, 079
1876	Rutherford B. Hayes . . . . .	Republican . . . . .	185		4, 023, 950
	S. J. Tilden . . . . .	Democrat . . . . .	184		4, 284, 855

An analysis of this table will show very forcibly the defects of our present mode of elections. It demonstrates that the number of electoral votes has no just proportion to the number of popular votes cast. The first case in this table was the election in which General Jackson and John Quincy Adams were the opposing candidates.

General Jackson had 155,899 votes, against 105,321 votes cast for John Quincy Adams. There were other candidates, and Jackson did not have a majority over all. He had a majority over John Quincy Adams, his principal competitor, of 50,551, but he did not have a majority of all the electoral votes cast, as required under the Constitution, and the election was thrown into the House of Representatives, and John Quincy Adams, by the machinations of politicians, was elected in spite of the popular will.

Colonel John H. Wheeler has made an interesting analysis of the various elections named in the table above, a part of which I give below:

The next election, (1828,) while the popular majority for Jackson was 137,870, in a total vote of 1,162,180, his electoral majority was 95, in a total of 261; that is, the popular ratio was as 1 to 8; the electoral majority was as 1 to  $2\frac{3}{4}$ , a ratio three times greater.

In the next election (1832) this disparity appears still more glaring. While Jackson's popular majority was 137,313, in a total vote of 1,237,691, or as 1 to 9, his electoral majority was 170, a ratio seven times greater.

In the next election (1836) the popular majority for Van Buren was but 2,608, in a total vote of 1,541,318, while the electoral majority was 124, in a total vote of 294; that is to say, the ratio of the majority of the popular vote was but as 1 to 600, while the ratio of the electoral majority was less than 1 to 6, a ratio 100 as great.

In the election of 1840 Harrison's popular majority was 145,900, in a total poll of 2,402,506, a ratio of 1 to 16, while his electoral majority was 174, in a vote of 294, or nearly ten times greater than the popular majority.

In the next election (1844) Polk received but 31,000 majority, in a total of 2,626,950, or 1 in 900, while his electoral vote was 65 out of 275, or 1 to 4; 200 times the popular vote.

In 1848 General Taylor was in a minority of the popular vote; his vote being 1,362,242, and Cass and Van Buren had 1,515,173; and yet he received a majority of the electoral votes.

In 1852 Pierce's popular majority was 202,008, in a total vote of over 3,000,000, a ratio of 1 to 15, while his electoral majority was 192, out of 296 votes, a ratio ten times as great.

In 1856 Mr. Buchanan was in a minority of the popular vote; he received 1,838,229, while the vote of Frémont and Fillmore was 2,216,789; and yet he received a majority of the electoral votes.

In 1860 Mr. Lincoln was in a minority of nearly a million of popular votes. He received a total vote of 1,866,452, while the vote of Douglas, Breckinridge, and Bell combined was 2,813,741; and yet Mr. Lincoln received a majority of 123 in an electoral vote of 303. This election demonstrates in a most conclusive manner the fallacy of the electoral mode, and the possible misrepresentation under it of the popular will. Lincoln received 180 votes, and Douglas only 12, out of 303 electoral votes. In the popular vote Lincoln received 1,866,452, while Douglas received 1,375,157 votes.

In 1864 Lincoln received 2,223,035 and McClellan received 1,811,754 of the popular vote, while in the electoral college Lincoln received 212 votes, and McClellan received 21. A ratio of 22 to 18 in one case to 10 to 1 in the other.

In the presidential election of 1868 General Grant received a popular majority of 309,716 in a total vote of 5,722,990. The ratio being about 10 to 9, while his majority of the electoral vote was 134 in a total vote of 294, the ratio being in that case as 13 to 5.

In the election of 1872 General Grant received 3,597,070 votes, and Horace Greeley received 2,840,079 votes; Grant's majority being only 727,975, and yet Grant received 286 electoral votes, and his poor opponent received none, while Charles O'Connor having but 29,408 of the popular vote received 42 of the electoral votes.

But the last election held shows the monstrous outrage that can be perpetrated upon the popular will by the machinery supposed to be sanctioned by our mode of election. Rutherford B. Hayes is represented as receiving after the revision of the returning boards and the electoral commission 4,033,950 against 4,284,757 votes allowed to Samuel J. Tilden, the democratic candidate, leaving Hayes in a minority of 156,909. This showing is bad enough without taking into consideration the action of the Louisiana and Florida returning boards.

It is here seen that a person who has not received a majority of the popular vote can still be made the President of the United States under the present electoral system. Even worse, it is shown that a person who has received a large minority of the popular vote may be elevated to the presidential chair. A system productive of so much injustice, fraud, intrigue, and corruption cannot be tolerated by the American people. Many attempts have been made in the past to change it. In 1823 Mr. McDuffie, the great and enlightened statesman of South Carolina, first proposed an amendment upon this subject. The prominent feature of the amendment proposed by him is contained in the following:

For the purpose of choosing a President and Vice-President of the United States, each State shall be divided by the Legislature thereof into so many districts as the State shall be entitled to Representatives in Congress, and each district shall be composed of contiguous or coterminous territory, and contain, as nearly as may be conveniently, the number of persons for whom the State is entitled to a Representative according to the apportionment; which districts, when laid off, may not be altered until after another census shall be taken.

The inhabitants of each of the said districts who shall have the qualifications requisite for electors of the most numerous branch of the State Legislature, shall appoint one elector of President and Vice-President having the same qualifications. The electors appointed shall meet in their respective States and appoint the other two electors to which the State is entitled, and also fill up vacancies, if such there shall be, from death, sickness, inability, or non-attendance of electors appointed by the people. The whole number of electors of each State shall then vote by ballot for the President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves.

The remainder of the amendment relates principally to the details of the proposed change. Mr. McDuffie, as chairman of the committee appointed for the purpose, accompanied this amendment by a learned and able report in which he reviewed the evils of our present system. He also advocated its adoption in a masterly speech, from which I beg leave to quote a part :

In bringing forward a proposition so fundamental in its character and calculated in my opinion to exert a lasting influence upon the happiness of future generations it is a source of sincere gratification to reflect that the measure does not rest upon the recommendation of an individual so humble and inexperienced as myself, but that its leading provisions (subject to some subordinate modifications which I hope will be adopted) are approved and sanctioned by many of the most profound and experienced statesmen of the country.

This proposition has been for more than eight years before the nation; it was recommended by a majority of the States and a change has been anxiously desired by a large majority of the American people. When to the imposing weight of these circumstances we add the consideration that the great body of the people are at this moment deeply and justly excited upon the subject it must be apparent to every member of the committee that this proposition comes before us with a weight of authority which imperatively demands and will undoubtedly secure for it the most solemn and dispassionate consideration.

It is seen that at the early period of 1823 this subject had already excited very general interest.

In 1823 Thomas H. Benton proposed in the Senate of the United States an amendment of the Constitution upon the same subject. It had for its objects, first, the division of the United States into electoral districts; second, the abolition of the use of intermediate electors; and, third, the election of the President and Vice-President by the direct vote of the people. He delivered, in support of his amendment, an able and exhaustive speech upon that subject, in which he commented severely upon the abuses of our present system and spoke emphatically upon the evils of a general-ticket system.

At a later period in our history several amendments to our Constitution were proposed on the same subject. General Jackson in all of his messages recommended the abolition of the system.

In 1872 Senator Morton offered a resolution in the Senate of the United States instructing the Committee on Privileges and Elections of that body to examine and report upon the best and most practical mode of electing a President and Vice-President. In pursuance of that resolution an amendment was reported in 1874 in which the election of President and Vice-President is committed to a direct vote of the people upon the district plan similar to that proposed in 1823 by Mr. Benton.

In 1875 Mr. Horace H. Garrison proposed a similar amendment in the House of Representatives and accompanied it by a learned and able report. Mr. H. Boardman Smith, the chairman of the committee that had charge of the examination of the subject, dissented from the report of the committee and submitted an amendment of his own, which, on account of its originality, I will in part give:

SECTION 1. The President and Vice-President shall be elected by the direct vote of the people, but no voter in any State shall vote for candidates for President and Vice-President who are both citizens of the same State with himself.

SEC. 2. In counting the votes, the aggregate popular vote in each State for President and Vice-President shall be respectively divided by the number of the Representatives apportioned to such State in the House of Representatives and twice the result, the quotient shall be added to the vote of the candidate having the highest number of the popular votes in such State for President and Vice-President respectively as and for the State vote for such candidate. The person having the highest number of votes in all the States, including the popular vote and the State vote, for President, shall be President; and the person having the highest number of votes in all the States, including the popular vote and the State vote, for Vice-President, shall be Vice-President.

The review I have given of the efforts made to reform the Constitution upon the subject of the elections for President and Vice-President, shows that at no period were our statesmen insensible to the necessity for such reformation. It will strike every one as strange, however, that no considerable progress was at any time made toward the adoption of the numerous amendments proposed. An examination of the amendments themselves will show the reasons why they have not succeeded. The amendments all proposed a radical change. No such alarming danger had arisen before the late election as to drive the statesmen of the country from their *constitutional* inertness.

Furthermore, it was supposed that all of them were an infringement on the rights of the States. This was not true in point of fact; yet the apprehension that their adoption would lead to a centralization of power in the General Government had much to do with their failure. It is therefore necessary in providing a remedy for existing evils not only to examine the evils themselves, but also to take into consideration what might be acceptable to the States, and especially the smaller States, which are so jealous of the unequal influence the present system gives them.

Any proposition that would strike down the advantages they have as represented by their senatorial-electoral votes will incur their opposition, and therefore fail. A plan to succeed, therefore, must preserve as nearly as possible the autonomy of the States. Hon. Charles R. Buckalew, late a Senator from Pennsylvania, and one of the most philosophical political thinkers that this country has produced, proposed a plan which is free from all the objections suggested, and yet, as I believe, proposes a thorough remedy for the existing evils.

Soon after the last presidential election, in February, 1877, I introduced his plan in Congress. I give the bill *in extenso*:

Joint resolution proposing an amendment to the Constitution of the United States of America.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,) That the*

following amendment to the Constitution of the United States be proposed to the Legislatures of the several States, which, when ratified by three-fourths of said Legislatures, shall become and be a part of the Constitution, namely:

#### ARTICLE XVI.

Article 2, section 1, paragraph 2, to be made to read as follows:

"Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which the State shall be entitled in Congress."

The first division of the twelfth amendment to the Constitution, ending with the words "directed to the President of the Senate," to be struck out, and the following substituted:

"The citizens of each State who shall be qualified to vote for Representatives in Congress shall cast their votes for candidates for President and Vice-President by ballot, and proper returns of the votes so cast shall be made under seal, within ten days, to the secretary of state or other officer lawfully performing the duties of such secretary in the government of the State, by whom the said returns shall be publicly opened in the presence of the chief executive magistrate of the State, and of the chief justice or judge of the highest court thereof; and the said secretary, chief magistrate, and judge shall assign to each candidate voted for by a sufficient number of citizens a proportionate part of the electoral votes to which the State shall be entitled, in manner following, that is to say: they shall divide the whole number of votes returned by the whole number of the State's electoral vote, and the resulting quotient shall be the electoral ratio for the State, and shall assign to candidates voted for one electoral vote for each ratio of popular votes received by them respectively, and, if necessary, additional electoral votes for successive largest fractions of a ratio shall be assigned to candidates voted for until the whole number of the electoral votes of the State shall be distributed; and the said officers shall thereupon make up and certify at least three general returns, comprising the popular vote by counties, parishes, or other principal divisions of the State, and their apportionment of electoral votes as aforesaid, and shall transmit two thereof, under seal, to the seat of Government of the United States, one directed to the President of the Senate and one to the Speaker of the House of Representatives, and a third unsealed return shall be forthwith filed by the said secretary in his office, be recorded therein, and be at all times open to inspection."

Article 2, section 1, paragraph 4, to be made to read as follows:

"The Congress may determine the time of voting for President and Vice-President and the time of assigning electoral votes to candidates voted for, which times shall be uniform throughout the United States."

Strike out the words "electors appointed," where they occur in the twelfth amendment to the Constitution, and insert in their stead the words "electoral votes."

I again introduced it in October, 1877, at a subsequent session of Congress. This amendment was referred to a special committee of the House "on the state of the law respecting the ascertainment and declaration of the result of the election for President and Vice-President." This committee proposed an amendment in which they advocated the vital principle of the amendment of Mr. Buckalew.

In a contribution to the North American Review for March and April, 1877, Mr. Buckalew explains his amendment. It is but just, since he is the author of the plan, that his opinion of it should be presented, especially so since he does it in a more able manner than I can hope to do myself. I read from pages 170 to 174, both inclusive:

The resolution for constitutional amendment introduced in the House of Representatives, February 7, by Mr. MAISH, of Pennsylvania, presents a proposition worthy of deliberate examination. It is in some material respects new, but is simple in its terms, strikes an effectual blow at known forms of electoral abuse, and is plainly founded in principles of justice. The amendment may be conveniently described under three heads of remark: First, it provides for a direct vote by the people for President and Vice-President; second, it retains electoral votes as at present, while dispensing with electors and electoral colleges; and, third, it assigns to candidates electoral votes from each State in proportion to popular votes received by them therein. This last feature of the plan is peculiar to it, and, taken with the others, presents a complete scheme of constitutional amendment.

A direct popular vote for President and Vice-President is highly desirable, if it can be secured without encountering objections which will outweigh its advantages; and therefore most plans of radical amendment relating to presidential elections will comprise or involve it. But the popular-majority principle, whether ap-

plied to the whole country without distinction of States or applied to the vote of each State, is open to grave objections. In the former case it converts the whole body of American electors into a consolidated democracy, gives unchecked effect upon the general result to all disturbing and sinister influences which assail elections, and opens a field of inquiry in cases of contest or dispute which cannot be well or safely entered upon by a court or by Congress. In the latter case the plan must be combined with some scheme of State representation or proportional vote, which brings in or retains the idea of State electors or electoral votes, and assigns unjust, because inordinate, weight to State majorities; besides, within each State it plainly invites to corruption and all forms of undue influence. Nor do we avoid these objections if we modify the plan and provide for taking the popular vote by districts or subdivisions of States, the majority in each to count as one or more electoral or State votes.

A local fraud under such modified plan may expend its force in a single district, instead of contaminating the whole State return; and the general party majority in the State may not, and commonly will not, carry majorities in *all* the districts, and thus absorb all the power of the State in the election. In these respects, however, this modified plan affords but a partial remedy, while it calls into existence an evil and a scandal of the first magnitude—one fortunately unknown hitherto in presidential elections—we mean the gerrymandering of States in the formation of electoral districts. The competition in injustice and outrage between parties which the plan would inevitably produce would soon become intolerable. But the Marsh amendment, as will be presently seen, is quite free from these imperfections, while it completely accepts and applies the direct-popular-vote principle. It is, therefore, to be preferred to other plans which, aiming at the same object, can accomplish that object only in disregard of great and permanent objections.

In the next place, the amendment dispensing with electors retains to the States electoral votes as at present; that is, to each a number equal to the number of Senators and Representatives from the State in Congress; and this is perhaps a necessary provision in any proposition of change; for, as was explained by an accomplished writer in the last number of the Review, it is not to be expected that the smaller States, including more than one-half of the whole number, will surrender that portion of their power in presidential elections which is now represented by senatorial electors. Such surrender would involve a loss of relative power by each of no less than twenty-one States, ranging from one-fourth to two-thirds of their present voting power. It follows that Congress will not pass by a two-third vote of each House, nor three-fourths of the States accept, an amendment which will dispense with State electoral votes.

By the proportional distribution of electoral votes, based strictly upon the popular vote of each State, several objects of the highest importance will be secured:

1. It will very greatly reduce, in fact, almost extinguish, the chances of a disputed election, by causing the electoral vote of the State to be very nearly a reflex of the popular vote by confining the effect of fraud and other sinister influences within narrow limits and by withdrawing the compact, undivided power of any one State from the contest. Giving a just allotment of electoral votes to candidates, not greatly too many or too few, it conforms to the popular sense of justice and tends to allay passion and prevent controversy. It excludes the temptation to falsify or manipulate election returns, by which the whole vote of the State may be wielded in the interest of a party. Under it there would be no rival electoral colleges or double returns of electoral votes, and pivotal States, inviting to profuse money expenditure, to fraud, and to false returns, would no longer be known as a conspicuous feature of presidential contests.

2. It will render almost impossible the election of a minority candidate in a contest between two, and will in many cases prevent a plurality candidate from receiving an unjust electoral vote, and often from being improperly returned to the House of Representatives as one of the three persons from whom the choice is to be made, in cases where the power of choice shall devolve upon that House. It will secure justice by insuring fair representation of the people and applying the majority rule to the electoral instead of the popular vote; in other words, all the people will be represented by electoral votes, and the majority principle will be properly applied when the general returns of those electoral votes shall be subjected to computation. Popular disfranchisement within a State will be swept away, while the supporters of no candidate will control more than their due share of electoral power.

3. It will very greatly discourage and prevent unfairness and fraud in elections by excluding the motives which produce them. In this respect its superiority to other plans of amendment is conspicuous and unquestionable. Assuming a ratio of thirty thousand for an electoral vote, a fraudulent vote of ten thousand would mean one-third of one electoral vote—in other words, would mean nothing as to results—instead of meaning, as it now does in many cases, the balance of power in a State, and the control of its whole electoral vote. In a State like New York or

Pennsylvania a fraudulent vote of even thirty thousand or forty thousand would affect but one electoral vote out of thirty or forty cast by the State, instead of transferring all those thirty or forty votes from one candidate to another. Speaking within bounds, the effect of any common fraud in presidential elections would become inappreciable, and the motive for committing such fraud would be wholly removed. Could there be a more complete device for purifying and improving elections than this, or one more imperatively demanded by the necessities of the times? District voting for electors would not extirpate this evil of corrupt elections, for the balance-of-power vote in each district would be the object of money expenditure and evil influence, as we already have them in congressional districts. Ten thousand foul votes in a State might control half a dozen or more districts, while they would be entirely lost when counted in the aggregate or total vote of the State.

One of the most pernicious effects of the present system is the great inducement it offers for the perpetration of fraud. Under the proposed amendment the inducement would be almost entirely removed. The operations of a Louisiana returning board could not, in its most reckless disregard of the votes of the people, affect a single electoral vote. In the pivotal States, where the fictitious majority of a few thousand votes controls the entire electoral vote of the States, what frauds are not resorted to! An administration struggling for the perpetuation of its power through the influence of its patronage and unmitigated use of money makes States like these the scene of corruption horrible to contemplate and dangerous to the existence of the Republic. Under the plan we propose "the game would not be worth the candle," for in most cases the ratio would be greater than all the votes that could be manufactured by all the corrupt means that could be brought into requisition. It would achieve a consummation devoutly to be wished for—a peaceable, orderly, and honest election for President and Vice-President of the United States.

The artificial influences of the elections held in October in the States of Ohio and Indiana would be completely destroyed, for the results in those States then would give no indication or suggest any intimation what the result of the presidential election would be in the Union.

I have yet better reasons to advance in favor of this amendment, which I trust will not be disregarded. The bane of our politics in the past and the present is sectionalism. Its effects in the past history of the country need not be told. It was hoped by many that we could after the war enter upon a career of fraternal feeling and mutual good understanding; that no sectional issues would arise; that party lines would not be drawn between the different sections of our country. But it must be a matter of serious concern to all who are interested in the future tranquillity and prosperity of our country to hear such words as a "solid South" and a "united North." A distinguished writer once said that "Ideas govern the world or throw it into chaos."

Unreasonable as may be the cant of the politician, we know from bitter experience that party lines drawn upon issues like these engender sectional hate and, as I believe, will, as heretofore, lead to a dissolution of the Union or revolution. We all realize its tendencies. Consolidation of interests in one section begets a countervailing consolidation of interests in another, and thus section is arrayed in deadly hostility against section. The election of President and Vice-President as we now have it is, as it always has been, the chief source of this trouble.

When the time comes in our presidential elections, as it inevitably will under the proposed plan, that a republican candidate for President will receive a portion of the electoral vote of the State of

Georgia and a democratic candidate for the same office will receive a portion of the vote of Massachusetts, sectionalism will disappear from our politics, fraternal feeling will spring up between the sections, and the President so elected by votes from all sections of the country will feel that he is the President of the whole undivided country.

I pause here to notice an objection that has been made to the plan suggested. It has been urged as an objection to this plan that it interferes with the rights of the States. Mr. SOUTHARD, of Ohio, in a speech delivered by him on the 14th of February last, has ably met these objections. The plan we advocate was ably presented in a report of the committee heretofore mentioned of which Mr. SOUTHARD was chairman. The minority of that committee did not concur with the views of the majority, and among the objections then urged in a report they presented are found the following:

The proposed plan takes away from the political bodies the right to speak, each for all its people, and permits minorities to speak to the whole United States, to have their voice heard here in the aggregate result; to become in effect voters of the United States instead of voters of the States. The right to speak by a majority when its fundamental laws permit, is a right inherent in every republic. This plan takes away from these republics (the States) this right to speak by their majorities, and confers upon the United States the right to say by a majority of the whole who shall be President and Vice-President. Why should the right of a majority in a State not be as sacred as the right of the majority of the whole United States; why rob the States of this right and confer it upon the General Government? Is it not too clear that this is simply another step toward consolidating the States out of sight in our system?

This objection is founded upon the idea, as will be seen, that the Constitution provides for the election of the President by the general-ticket system. This position is wholly untenable. It can be successfully shown that the framers of the Constitution contemplated no such election. Mr. McDuffie, in a speech I have already quoted from, answers that question, and I give here what he says upon that subject:

I have already shown, from the highest authority, that the convention intended that the electors of the President should be chosen by the "immediate act of the people of America." I will now attempt to show that it was equally intended that the people should vote by districts. I believe I may safely assert that at the time the Constitution was framed the general-ticket system, by which the whole population of a State gives an aggregate vote, either for Representatives or other public agents, was unknown in the political history of the world. I call upon gentlemen, if any such example existed, to produce it. It is an invention of aftertimes, the mere offspring of temporary expediency, and never entered into the conception of the convention. By adverting to the proceedings of that body it will be seen that all the propositions involving a specification of the mode of choosing electors and members of Congress contained a provision for dividing the States into districts. The mode of choosing was finally left to the State Legislatures, that they might regulate the details of the election, but in the confidence that they would adopt the only plan of popular election which had ever existed.

Mr. Benton, in commenting upon this feature of our presidential elections in his speech in the Senate of the United States in 1824, made the following forcible remarks:

The general-ticket system now existing in the States was the offspring of policy, and not of any disposition to give fair play to the will of the people. It was adopted by the leading men of those States to enable them to consolidate the vote of the State. It would be easy to prove this by referring to facts of historical notoriety.

If it be true, and that it is it seems to me there can be no doubt, that a district system was the one that our fathers had in view, then no invasion of the rights of the States will follow by the adoption of the proposed amendment, for it does not in any way affect the status of the States that would not also be so affected by the district system.

Their argument shows that the departure from the original intention of the framers of the Constitution has resulted in the acquisition of power by the States which the Constitution does not warrant, and the amendment will result only in a restoration of those powers which were originally granted. The election of President and Vice-President contains no surrender of power by the States. It is an arrangement between the States made by the terms of the Constitution, and when the States entered into the arrangement each impliedly agreed that they would perform their part of the agreement honestly and faithfully. The practice that has grown up is a violation of the letter and of the spirit of that agreement.

It might be interesting to show what effect the proposed plan would have had on the last presidential election. The tabulating the number of electoral votes each of the prominent candidates received shows that Mr. Tilden received a majority of eleven, irreversible by intrigue, fraud, or corruption. I present this table here to establish this important fact:

States.	Tilden.	Hayes.	States.	Tilden.	Hayes.
Maine .....	3	4	Texas .....	6	2
New Hampshire .....	2	3	Arkansas .....	4	2
Vermont .....	2	3	Missouri .....	9	6
Massachusetts .....	5	8	Tennessee .....	7	5
Rhode Island .....	2	2	Kentucky .....	7	5
Connecticut .....	3	3	Ohio .....	11	11
New York .....	18	17	Indiana .....	8	7
New Jersey .....	5	4	Illinois .....	10	11
Pennsylvania .....	14	15	Michigan .....	5	6
Delaware .....	2	1	Wisconsin .....	5	5
Maryland .....	4	4	Iowa .....	4	7
Virginia .....	7	4	Minnesota .....	2	3
West Virginia .....	3	2	Kansas .....	2	3
North Carolina .....	5	5	Nebraska .....	1	2
South Carolina .....	3	4	Nevada .....	1	2
Georgia .....	8	3	Colorado .....	1	2
Florida .....	2	2	Oregon .....	1	2
Alabama .....	6	4	California .....	3	3
Mississippi .....	5	3	Total .....	190	179
Louisiana .....	4	4			

That gives Mr. Tilden the eleven majority to which, according to the popular vote in each State, he is entitled.

A similar application of this plan to all the elections held in this country will show, first, that the will of the people would in all cases have been observed; secondly, that the usual concomitants of intrigue, fraud, and corruption would have been futile to defeat that will.

The district system, which has been strongly advocated, though I recognize it as an improvement on our present system, is yet liable to many objections from which the proposed plan is free. Close districts would offer to a limited extent the same inducement for fraud and corruption that the pivotal States now do. Many districts in the country would be nearly equally divided. These would invite all the political machinations that are usually resorted to to carry elections, notably such as the importation of voters and the gerrymandering of the States, thus depriving us of the benefits which we confidently hope will result from the amendment.

This amendment is presented in the conviction that it will produce

all the benefits that are claimed for it. We maintain that it will produce the following results:

1. It will render practically impossible the election of a minority President.
2. It will insure a just and equitable expression to the popular will.
3. It will almost entirely extinguish the chances of a disputed election.
4. It will remove the principal inducements for the perpetration of intrigue, corruption, and fraud, by rendering abortive all such attempts.
5. It abolishes the presidential electors, a useless, cumbersome, and dangerous agency in our mode of election.

Lastly, it destroys sectional issues, so dangerous to the peace, harmony, and safety of the country.

Are these not objects that should excite the interest and active support of our legislators? We fervently hope that this important question may receive the prompt and zealous attention of our future legislators, here and in the States.



Rock







LIBRARY OF CONGRESS



0 033 239 164 1